IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.909 OF 2005

Shri.Vinobha Bhave Smruti
Co.Op.Hsg. Society ..Petitioner

Vs.

Smt.Rukminibai Nagnath
Shahapurkar and Ors. ..Respondents

...

Mr.P.M.Pradhan with S.V.Sakhre for Petitioner
Mr.S.S.Shah for respondent nos.1A, 2B, C,D,E,F & 3 for Respondents

...

CORAM : B.H.MARLAPALLE,J.
DATE : MARCH 4,2005

P.C.:

1. Heard Mr.Pradhan with Mr.Sakhare, the learned counsel for the Petitioner-Society and Mr.Shah, the learned counsel for some of the respondents.

2. This petition under Article 227 of the Constitution of India arises from the order dated 29.1.2005 passed by the learned IIIrd Ad-hoc District Judge at Solapur below Exh. 229 in Special Civil Suit NO. 877 of 1997.

3. It appears that witness summons were issued in the name of Prabhakar Shivram Dhara pursuant to the application dated 4.1.2005 submitted by the plaintiff

and this was the plaintiff-society's 12th witness. It was subsequently contended by an application at Exh.212 that undoubtedly it was not recorded while making an application for witness summons that he should come before the Court with the record in his possession. By this application Exh.212, the said lacunae was tried to be corrected and it was prayed that said witness should be directed to bring the record with him and the said record belonged to the society and was in his custody. This application was allowed by an order dated 5.1.2005 but with costs of Rs.200/-.

4. On 25.1.2005, the witness Prabhakar Dhara (12th witness) was in the witness box and during the course of examination-in-chief, an attempt was made to bring on record that the record brought by the said witness was not complete record and examination-in-chief was adjourned till 27.1.2005. However, on the next date i.e. 27.1.2005, the plaintiff submitted another application at Exh.229 purportedly under Order VII Rule 14 of the C.P.C. seeking directions for production of proceeding book, vouchers, receipts, day book, membership register etc. and it was opposed by the defendant. The trial Court noted that the issues were framed on 5.2.2000, the list of documents was submitted at Exh.34 whereas list of witnesses was at Exh.154/A which was submitted on

31.1.2004. In the list of documents, there was no mention made of Khatawani book, ledger book and correspondence with the Government office etc. including the vouchers. On 18.1.2002, the evidence of the plaintiff was recorded and that time also, the plaintiff did not seek leave for producing the documents as claimed in application at Exh.229. The trial Court, therefore, noted that the application submitted at Exh.229 was not bonafide and the plaintiff was delaying the trial of the suit. The detailed reasoning given by the trial Court in rejecting the application at Exh.229 cannot be termed as perverse or patently erroneous calling for interference in this petition.

5. Hence, the petition is rejected summarily.

6. Certified copy expedited.

[B.H.MARLAPALLE,J.]